

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 260

SENATE BILL 1433

AN ACT

AMENDING SECTIONS 8-382, 8-396, 8-416, 13-805, 13-4401, 13-4415, 13-4437 AND 13-4438, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 3, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 8-383.01 AND 8-421; AMENDING TITLE 13, CHAPTER 38, ARTICLE 18, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4042; AMENDING TITLE 13, CHAPTER 38, ARTICLE 29, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4234.01; AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4402.01; AMENDING TITLE 31, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 31-403; PROVIDING FOR DELAYED REPEAL OF SECTIONS 13-4042 AND 13-4234.01, ARIZONA REVISED STATUTES; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-382, Arizona Revised Statutes, is amended to
3 read:

4 8-382. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accused" means a juvenile who is referred to juvenile court for
7 committing a delinquent act.

8 2. "Appellate proceeding" means ~~a review of a lower court's decision~~
9 ANY CONTESTED MATTER before the state court of appeals, the state supreme
10 court, a federal court of appeals or the United States supreme court.

11 3. "Arrest" means the actual custodial restraint or temporary custody
12 of a person.

13 4. "Court" means the juvenile division of the superior court when
14 exercising its jurisdiction over children in any proceeding relating to
15 delinquency.

16 5. "Crime victim advocate" means a person who is employed or
17 authorized by a public entity or a private entity that receives public
18 funding primarily to provide counseling, treatment or other supportive
19 assistance to crime victims.

20 6. "Custodial agency" means any law enforcement officer or agency, a
21 sheriff, a county juvenile detention center, the department of juvenile
22 corrections or a secure mental health facility that has custody of a person
23 who is arrested or in custody for a delinquent or incorrigible offense.

24 7. "Delinquency proceeding" means any hearing, argument or other
25 matter that is scheduled or held by a juvenile court judge, commissioner or
26 hearing officer ~~relating~~ AND THAT RELATES to an alleged or adjudicated
27 delinquent offense.

28 8. "Delinquent" means a child who is adjudicated to have committed a
29 delinquent act.

30 9. "Delinquent act" means an act to which this article applies
31 pursuant to section 8-381.

32 10. "Detention hearing" means the accused's initial appearance before
33 the court to determine release ~~prior to~~ BEFORE adjudication.

34 11. "Final disposition" means the ultimate termination of the
35 delinquency proceeding by a court, including dismissal, acquittal, transfer
36 to adult court or imposition of a disposition after an adjudication for a
37 delinquent offense.

38 12. "Immediate family" means a victim's spouse, parent, child, sibling,
39 grandparent or lawful guardian.

40 13. "Juvenile defendant" means a juvenile against whom a petition is
41 filed seeking to have the juvenile adjudicated delinquent.

42 14. "Lawful representative" means a person who is designated by the
43 victim or appointed by the court and who will act in the best interests of
44 the victim.

1 15. "Postadjudication release" means release on probation, intensive
2 probation, work furlough, community supervision or home detention, release on
3 conditional liberty pursuant to section 41-2818 by the department of juvenile
4 corrections or any other permanent, conditional or temporary release from
5 confinement, discharge or completion of commitment by the department of
6 juvenile corrections, a sheriff, a municipal jail, a juvenile detention
7 center, a residential treatment facility or a secure mental health facility.

8 16. "Postadjudication review hearing" means a hearing that is held in
9 open court and that involves a request by the juvenile for review of a
10 disposition.

11 17. "Postarrest release" means the discharge of the accused from
12 confinement.

13 18. "Release" means no longer in the custody of the custodial agency
14 and includes transfer from one custodial agency to another custodial agency.

15 19. "Rights" means any right granted to the victim by the laws of this
16 state.

17 20. "Victim" means a person against whom the delinquent act was
18 committed, or if the person is killed or incapacitated, the person's
19 immediate family or other lawful representative, except if the person is in
20 custody for an offense or is the accused.

21 Sec. 2. Title 8, chapter 3, article 7, Arizona Revised Statutes, is
22 amended by adding section 8-383.01, to read:

23 8-383.01. Victims' rights dismissed counts

24 A. IF A CRIMINAL OFFENSE AGAINST A VICTIM HAS BEEN CHARGED BUT THE
25 PROSECUTION ON THE COUNT OR COUNTS INVOLVING THE VICTIM HAS BEEN OR IS BEING
26 DISMISSED AS THE RESULT OF A PLEA AGREEMENT IN WHICH THE DEFENDANT IS
27 PLEADING TO OR PLED TO OTHER CHARGES, THE VICTIM OF THE OFFENSES INVOLVED IN
28 THE DISMISSED COUNTS, ON REQUEST, MAY EXERCISE ALL THE APPLICABLE RIGHTS OF A
29 CRIME VICTIM THROUGHOUT THE CRIMINAL JUSTICE PROCESS AS THOUGH THE COUNT OR
30 COUNTS INVOLVING THE PERSON HAD NOT BEEN DISMISSED.

31 B. AS TO EACH COUNT THAT IS DISMISSED, THE PROSECUTOR SHALL NOTIFY THE
32 PROBATION DEPARTMENT IF THE VICTIM REQUESTED THE VICTIM'S RIGHTS PURSUANT TO
33 THIS ARTICLE.

34 C. FOR EACH VICTIM WHO IS INVOLVED IN THE DISMISSED COUNTS AND WHO
35 REQUESTED THE VICTIM'S RIGHTS, THE PROSECUTOR SHALL FORWARD TO THE PROBATION
36 DEPARTMENT INFORMATION WITHIN THE PROSECUTOR'S POSSESSION THAT WOULD ENABLE
37 THE PROBATION DEPARTMENT TO CARRY OUT ITS DUTIES AS PRESCRIBED BY THIS
38 ARTICLE.

39 Sec. 3. Section 8-396, Arizona Revised Statutes, is amended to read:

40 8-396. Notice of probation modification, termination or
41 revocation disposition matters; notice of arrest

42 A. On request of the A victim WHO HAS PROVIDED AN ADDRESS OR OTHER
43 CONTACT INFORMATION, the court shall notify the victim of any OF THE
44 FOLLOWING:

1 1. A probation revocation disposition proceeding or any proceeding in
2 which the court is asked to terminate the probation or intensive probation of
3 the delinquent who committed the delinquent act against the victim.

4 ~~B. If a victim has requested postadjudication notice and probation is~~
5 ~~revoked, the court shall provide a copy of the victim's request for~~
6 ~~postadjudication notice to the department of juvenile corrections.~~

7 ~~C. On request of the victim, the court shall notify the victim of any~~
8 ~~of the following:~~

9 ~~1. 2. A- ANY HEARING ON A PROPOSED modification of the terms of~~
10 ~~probation or intensive probation of a delinquent only if the modification~~
11 ~~will substantially affect the delinquent's contact with or the safety of the~~
12 ~~victim or if the modification affects restitution or incarceration status.~~

13 ~~2. 3. The arrest of a delinquent pursuant to a warrant issued for a~~
14 ~~probation violation.~~

15 B. ON REQUEST OF A VICTIM WHO HAS PROVIDED A CURRENT ADDRESS OR OTHER
16 CURRENT CONTACT INFORMATION, THE PROBATION DEPARTMENT SHALL NOTIFY THE VICTIM
17 OF THE FOLLOWING:

18 1. ANY PROPOSED MODIFICATION TO ANY TERM OF PROBATION IF THE
19 MODIFICATION AFFECTS RESTITUTION OR INCARCERATION STATUS OR THE DELINQUENT'S
20 CONTACT WITH OR THE SAFETY OF THE VICTIM.

21 2. THE VICTIM'S RIGHT TO BE HEARD AT A HEARING THAT IS SET TO CONSIDER
22 ANY MODIFICATION TO BE MADE TO ANY TERM OF PROBATION.

23 3. ANY VIOLATION OF ANY TERM OF PROBATION THAT RESULTS IN THE FILING
24 WITH THE COURT OF A PETITION TO REVOKE PROBATION.

25 4. THAT A PETITION TO REVOKE PROBATION ALLEGING THAT THE JUVENILE
26 ABSCONDED FROM PROBATION HAS BEEN FILED WITH THE COURT.

27 5. ANY CONDUCT BY THE JUVENILE THAT RAISES A SUBSTANTIAL CONCERN FOR
28 THE VICTIM'S SAFETY.

29 C. IF A VICTIM HAS REQUESTED POSTADJUDICATION NOTICE AND PROBATION IS
30 REVOKED AND THE JUVENILE IS COMMITTED TO THE DEPARTMENT OF JUVENILE
31 CORRECTIONS, THE COURT SHALL NOTIFY THE DEPARTMENT OF JUVENILE CORRECTIONS OF
32 THE VICTIM'S REQUEST.

33 D. On request of the victim, the department of juvenile corrections
34 shall notify the victim of any of the following:

35 1. Any proceeding in which the department may revoke the conditional
36 liberty of the delinquent who committed the delinquent act against the
37 victim.

38 2. A modification of the terms of conditional liberty only if the
39 modification will substantially affect the delinquent's contact with the
40 victim or the safety of the victim or if the modification affects restitution
41 or secure care status.

42 3. The arrest of a delinquent pursuant to a warrant issued for a
43 conditional liberty violation.

1 Sec. 4. Section 8-416, Arizona Revised Statutes, is amended to read:
2 8-416. Standing to invoke rights; recovery of damages

3 A. The victim has standing to seek an order, or to bring a special
4 action ~~mandating that the victim be afforded~~ OR TO FILE A NOTICE OF
5 APPEARANCE IN AN APPELLATE PROCEEDING SEEKING TO ENFORCE any right or to
6 challenge an order denying any right guaranteed to victims under the victims'
7 bill of rights, article II, section 2.1, Constitution of Arizona, this
8 article or court rules. In asserting any right, the victim has the right to
9 be represented by personal counsel at the victim's expense.

10 B. A victim has the right to recover damages from a governmental
11 entity responsible for the intentional, knowing or grossly negligent
12 violation of the victim's rights under the victims' bill of rights, article
13 II, section 2.1, Constitution of Arizona, any implementing legislation or
14 court rule. Nothing in this section alters or abrogates any provision for
15 immunity provided for under common law or statute.

16 C. At the request of the victim, the prosecutor may assert any right
17 to which the victim is entitled.

18 D. ON THE FILING OF A NOTICE OF APPEARANCE AND IF PRESENT, COUNSEL FOR
19 THE VICTIM SHALL BE INCLUDED IN ALL BENCH CONFERENCES AND IN CHAMBERS
20 MEETINGS AND SESSIONS WITH THE TRIAL COURT THAT DIRECTLY INVOLVE A VICTIM'S
21 RIGHT ENUMERATED IN ARTICLE II, SECTION 2.1, CONSTITUTION OF ARIZONA.

22 Sec. 5. Title 8, chapter 3, article 7, Arizona Revised Statutes, is
23 amended by adding section 8-421, to read:

24 8-421. Statement of rights

25 IN ORDER TO ASSURE THAT ANY VICTIM WHO COMES BEFORE THE JUVENILE COURT
26 HAS BEEN ADVISED OF THE VICTIM'S CONSTITUTIONAL RIGHTS, A JUDGE OF THE
27 JUVENILE COURT SHALL MAKE THE FOLLOWING STATEMENT AT THE TIME EACH VICTIM
28 FIRST APPEARS IN THAT COURT:

29 IF YOU ARE THE VICTIM OF A DELINQUENT ACT WITH A CASE
30 PENDING BEFORE THIS COURT, YOU ARE ADVISED THAT YOU HAVE RIGHTS
31 TO JUSTICE AND DUE PROCESS UNDER ARIZONA LAW THAT, AMONG OTHERS,
32 INCLUDE THE RIGHT TO BE TREATED WITH FAIRNESS, RESPECT AND
33 DIGNITY, TO A SPEEDY DISPOSITION HEARING AND A PROMPT AND FINAL
34 CONCLUSION OF THE CASE, TO BE PRESENT AT COURT PROCEEDINGS, TO
35 CHOOSE WHETHER OR NOT TO BE INTERVIEWED BY THE JUVENILE'S
36 ATTORNEY, TO BE HEARD BEFORE THE COURT MAKES A DECISION ON
37 RELEASE, NEGOTIATION OF A PLEA, SCHEDULING AND DISPOSITION AND
38 TO SEEK RESTITUTION FROM A PERSON WHO IS ADJUDICATED AS CAUSING
39 YOUR LOSS. IF YOU HAVE NOT ALREADY BEEN PROVIDED WITH A WRITTEN
40 STATEMENT OF ALL VICTIMS' RIGHTS, PLEASE CONTACT THE VICTIM
41 SERVICES DIVISION OF THE PROSECUTOR'S OFFICE.

42 Sec. 6. Section 13-805, Arizona Revised Statutes, is amended to read:
43 13-805. Jurisdiction

44 A. The trial court shall retain jurisdiction of the case for purposes
45 of modifying the manner in which court-ordered payments are made until paid

1 in full or until the defendant's sentence expires. At the time the defendant
2 completes the defendant's period of probation or the defendant's sentence,
3 the court shall enter both:

4 1. A criminal restitution order in favor of the state for the unpaid
5 balance, if any, of any fines, costs, incarceration costs, fees, surcharges
6 or assessments imposed.

7 2. A criminal restitution order in favor of each person entitled to
8 restitution for the unpaid balance of any restitution ordered.

9 B. The clerk of the court shall notify each person who is entitled to
10 restitution of the criminal restitution order.

11 ~~B.~~ C. A criminal restitution order may be recorded and enforced as
12 any civil judgment, except that a criminal restitution order does not require
13 renewal pursuant to section 12-1611 or 12-1612. ENFORCEMENT OF A CRIMINAL
14 RESTITUTION ORDER BY ANY PERSON WHO IS ENTITLED TO RESTITUTION OR BY THE
15 STATE INCLUDES THE COLLECTION OF INTEREST THAT ACCRUES PURSUANT TO SECTION
16 44-1201 IN THE SAME MANNER AS ANY CIVIL JUDGMENT. A criminal restitution
17 order does not expire until paid in full.

18 ~~C.~~ D. A criminal restitution order is a criminal penalty for the
19 purposes of a federal bankruptcy involving the defendant.

20 Sec. 7. Title 13, chapter 38, article 18, Arizona Revised Statutes, is
21 amended by adding section 13-4042, to read:

22 13-4042. Appellate proceedings; request for extension; victim
23 notification

24 A. IN ANY APPELLATE PROCEEDING IN A CAPITAL CASE IN WHICH AN EXTENSION
25 OF THE TIME TO FILE A BRIEF IS REQUESTED, THE VICTIM, AFTER FILING A NOTICE
26 OF APPEARANCE, HAS A RIGHT TO RESPOND TO THE REQUEST FOR EXTENSION WITHIN TEN
27 DAYS AFTER THE FILING OF THE REQUEST.

28 B. ON THE FILING OF A NOTICE OF APPEARANCE, THE VICTIM SHALL SERVE A
29 COPY ON THE STATE AND THE DEFENDANT.

30 C. THE VICTIM MAY EXERCISE THE RIGHT TO RESPOND THROUGH THE STATE.

31 D. THE PARTY THAT REQUESTS THE EXTENSION SHALL PROVIDE NOTICE OF THE
32 REQUEST TO THE VICTIM IN A MANNER PRESCRIBED BY THE COURT.

33 E. THIS SECTION DOES NOT PROVIDE ANY PARTY OR THE VICTIM WITH A RIGHT
34 TO ORAL ARGUMENT.

35 Sec. 8. Title 13, chapter 38, article 29, Arizona Revised Statutes, is
36 amended by adding section 13-4234.01, to read:

37 13-4234.01. Post-conviction relief proceedings; request for
38 extension; victim notification

39 A. IN ANY POST-CONVICTION RELIEF PROCEEDING IN A CAPITAL CASE IN WHICH
40 AN EXTENSION OF THE TIME TO FILE A BRIEF IS REQUESTED, THE VICTIM, AFTER
41 FILING A NOTICE OF APPEARANCE, HAS A RIGHT TO RESPOND TO THE REQUEST FOR
42 EXTENSION WITHIN TEN DAYS AFTER THE FILING OF THE REQUEST.

43 B. ON THE FILING OF A NOTICE OF APPEARANCE, THE VICTIM SHALL SERVE A
44 COPY ON THE STATE AND THE DEFENDANT.

45 C. THE VICTIM MAY EXERCISE THE RIGHT TO RESPOND THROUGH THE STATE.

1 D. THE PARTY THAT REQUESTS THE EXTENSION SHALL PROVIDE NOTICE OF THE
2 REQUEST TO THE VICTIM IN A MANNER PRESCRIBED BY THE COURT.

3 E. THIS SECTION DOES NOT PROVIDE ANY PARTY OR THE VICTIM WITH A RIGHT
4 TO ORAL ARGUMENT.

5 Sec. 9. Section 13-4401, Arizona Revised Statutes, is amended to read:
6 13-4401. Definitions

7 In this chapter, unless the context otherwise requires:

8 1. "Accused" means a person who has been arrested for committing a
9 criminal offense and who is held for an initial appearance or other
10 proceeding before trial.

11 2. "Appellate proceeding" means a ~~ANY contested oral argument that is~~
12 ~~held in open court~~ MATTER before the state court of appeals, the state
13 supreme court, a federal court of appeals or the United States supreme court.

14 3. "Arrest" means the actual custodial restraint of a person or the
15 person's submission to custody.

16 4. "Court" means all state, county and municipal courts in this state.

17 5. "Crime victim advocate" means a person who is employed or
18 authorized by a public entity or a private entity that receives public
19 funding primarily to provide counseling, treatment or other supportive
20 assistance to crime victims.

21 6. "Criminal offense" means conduct that gives a peace officer or
22 prosecutor probable cause to believe that ONE OF THE FOLLOWING HAS OCCURRED:

23 (a) A felony. ~~or that~~

24 (b) A misdemeanor involving physical injury, the threat of physical
25 injury or a sexual offense ~~has occurred~~.

26 7. "Criminal proceeding" means any hearing, argument or other matter
27 that is scheduled by and held before a trial court but does not include any
28 deposition, lineup, grand jury proceeding or other matter that is not held in
29 the presence of the court.

30 8. "Custodial agency" means any law enforcement officer or agency, a
31 sheriff or municipal jailer, the state department of corrections or a secure
32 mental health facility that has custody of a person who is arrested or in
33 custody for a criminal offense.

34 9. "Defendant" means a person or entity that is formally charged by
35 complaint, indictment or information of committing a criminal offense.

36 10. "Final disposition" means the ultimate termination of the criminal
37 prosecution of a defendant by a trial court, including dismissal, acquittal
38 or imposition of a sentence.

39 11. "Immediate family" means a victim's spouse, parent, child, sibling,
40 grandparent or lawful guardian.

41 12. "Lawful representative" means a person who is designated by the
42 victim or appointed by the court and who acts in the best interests of the
43 victim.

44 13. "Post-arrest release" means the discharge of the accused from
45 confinement on recognizance, bond or other condition.

1 14. "Post-conviction release" means parole, work furlough, community
2 supervision, probation if the court waived community supervision pursuant to
3 section 13-603, home arrest or any other permanent, conditional or temporary
4 discharge from confinement in the custody of the state department of
5 corrections or a sheriff or from confinement in a municipal jail or a secure
6 mental health facility.

7 15. "Post-conviction relief proceeding" means a contested argument or
8 evidentiary hearing that is held in open court and that involves a request
9 for relief from a conviction or sentence.

10 16. "Prisoner" means a person who has been convicted of a criminal
11 offense against a victim and who has been sentenced to the custody of the
12 sheriff, the state department of corrections, a municipal jail or a secure
13 mental health facility.

14 17. "Release" means no longer in the custody of a custodial agency and
15 includes transfer from one custodial agency to another custodial agency.

16 18. "Rights" means any right that is granted to the victim by the laws
17 of this state.

18 19. "Victim" means a person against whom the criminal offense has been
19 committed, INCLUDING A MINOR, or if the person is killed or incapacitated,
20 the person's immediate family or other lawful representative, except if the
21 person is in custody for an offense or is the accused."

22 Sec. 10. Title 13, chapter 40, Arizona Revised Statutes, is amended by
23 adding section 13-4402.01, to read:

24 13-4402.01. Victims' rights; dismissed counts

25 A. IF A CRIMINAL OFFENSE AGAINST A VICTIM HAS BEEN CHARGED BUT THE
26 PROSECUTION ON THE COUNT OR COUNTS INVOLVING THE VICTIM HAS BEEN OR IS BEING
27 DISMISSED AS THE RESULT OF A PLEA AGREEMENT IN WHICH THE DEFENDANT IS
28 PLEADING TO OR PLED TO OTHER CHARGES, THE VICTIM OF THE OFFENSES INVOLVED IN
29 THE DISMISSED COUNTS, ON REQUEST, MAY EXERCISE ALL THE APPLICABLE RIGHTS OF A
30 CRIME VICTIM THROUGHOUT THE CRIMINAL JUSTICE PROCESS AS THOUGH THE COUNT OR
31 COUNTS INVOLVING THE PERSON HAD NOT BEEN DISMISSED.

32 B. AS TO EACH COUNT THAT IS DISMISSED, THE PROSECUTOR SHALL NOTIFY THE
33 PROBATION DEPARTMENT IF THE VICTIM REQUESTED THE VICTIM'S RIGHTS PURSUANT TO
34 THIS CHAPTER.

35 C. FOR EACH VICTIM WHO IS INVOLVED IN THE DISMISSED COUNTS AND WHO
36 REQUESTED THE VICTIM'S RIGHTS, THE PROSECUTOR SHALL FORWARD TO THE PROBATION
37 DEPARTMENT INFORMATION WITHIN THE PROSECUTOR'S POSSESSION THAT WOULD ENABLE
38 THE PROBATION DEPARTMENT TO CARRY OUT ITS DUTIES AS PRESCRIBED BY THIS
39 CHAPTER.

1 Sec. 11. Section 13-4415, Arizona Revised Statutes, is amended to
2 read:

3 13-4415. Notice of probation modification, termination or
4 revocation disposition matters; notice of arrest

5 A. On request of the A victim WHO HAS PROVIDED AN ADDRESS OR OTHER
6 CONTACT INFORMATION, the court shall notify the victim of any OF THE
7 FOLLOWING:

8 1. A probation revocation disposition proceeding or any proceeding in
9 which the court is asked to terminate the probation or intensive probation of
10 a person who is convicted of committing a criminal offense against the
11 victim.

12 ~~B. 2. On request of the victim, the court shall notify the victim~~
13 ~~of a ANY HEARING ON A PROPOSED modification of the terms of probation or~~
14 ~~intensive probation of a person only if the modification will substantially~~
15 ~~affect the person's contact with or safety of the victim or if the~~
16 ~~modification affects restitution or incarceration status.~~

17 ~~G. 3. On request of the victim, the court shall notify the victim of~~
18 ~~The arrest of a person who is on supervised probation and who is arrested~~
19 ~~pursuant to a warrant issued for a probation violation.~~

20 B. ON REQUEST OF A VICTIM WHO HAS PROVIDED A CURRENT ADDRESS OR OTHER
21 CURRENT CONTACT INFORMATION, THE PROBATION DEPARTMENT SHALL NOTIFY THE VICTIM
22 OF THE FOLLOWING:

23 1. ANY PROPOSED MODIFICATION TO ANY TERM OF PROBATION IF THE
24 MODIFICATION AFFECTS RESTITUTION OR INCARCERATION STATUS OR THE DEFENDANT'S
25 CONTACT WITH OR THE SAFETY OF THE VICTIM.

26 2. THE VICTIM'S RIGHT TO BE HEARD AT A HEARING THAT IS SET TO CONSIDER
27 ANY MODIFICATION TO BE MADE TO ANY TERM OF PROBATION.

28 3. ANY VIOLATION OF ANY TERM OF PROBATION THAT RESULTS IN THE FILING
29 WITH THE COURT OF A PETITION TO REVOKE PROBATION.

30 4. THAT A PETITION TO REVOKE PROBATION ALLEGING THAT THE DEFENDANT
31 ABSCONDED FROM PROBATION HAS BEEN FILED WITH THE COURT.

32 5. ANY CONDUCT BY THE DEFENDANT THAT RAISES A SUBSTANTIAL CONCERN FOR
33 THE VICTIM'S SAFETY.

34 Sec. 12. Section 13-4437, Arizona Revised Statutes, is amended to
35 read:

36 13-4437. Standing to invoke rights; recovery of damages; right
37 to counsel

38 A. The victim has standing to seek an order, ~~or to bring a special~~
39 ~~action mandating that the victim be afforded~~ OR TO FILE A NOTICE OF
40 APPEARANCE IN AN APPELLATE PROCEEDING SEEKING TO ENFORCE any right or to
41 challenge an order denying any right guaranteed to victims under the victims'
42 bill of rights, article 11, section 2.1, Constitution of Arizona, any
43 implementing legislation or court rules. In asserting any right, the victim
44 has the right to be represented by personal counsel at the victim's expense.

1 B. A victim has the right to recover damages from a governmental
2 entity responsible for the intentional, knowing or grossly negligent
3 violation of the victim's rights under the victims' bill of rights, article
4 II, section 2.1, Constitution of Arizona, any implementing legislation or
5 court rules. Nothing in this section alters or abrogates any provision for
6 immunity provided for under common law or statute.

7 C. At the request of the victim, the prosecutor may assert any right
8 to which the victim is entitled.

9 D. ON THE FILING OF A NOTICE OF APPEARANCE AND IF PRESENT, COUNSEL FOR
10 THE VICTIM SHALL BE INCLUDED IN ALL BENCH CONFERENCES AND IN CHAMBERS
11 MEETINGS AND SESSIONS WITH THE TRIAL COURT THAT DIRECTLY INVOLVE A VICTIM'S
12 RIGHT ENUMERATED IN ARTICLE II, SECTION 2.1, CONSTITUTION OF ARIZONA.

13 Sec. 13. Section 13-4438, Arizona Revised Statutes, is amended to
14 read:

15 13-4438. Statement of rights

16 In order to assure that any victim who comes before the court has been
17 advised of the victim's constitutional rights, at the daily commencement of
18 the regular criminal docket at which accused persons are arraigned, appear
19 for a status conference, make a change of plea or are sentenced, a judge of
20 the superior court shall make the following statement:

21 If you are the victim of a crime with a case pending
22 before this court, you are advised that you have rights TO
23 JUSTICE AND DUE PROCESS under Arizona law that, among others,
24 include the right to be treated with fairness, respect and
25 dignity, to a speedy trial AND A PROMPT AND FINAL CONCLUSION OF
26 THE CASE, to be present at court proceedings, to choose whether
27 or not to be interviewed by the defendant or the defendant's
28 attorney, to be heard before the court makes a decision on
29 release, negotiation of a plea, scheduling and sentencing and to
30 receive restitution from a person who is convicted of causing
31 your loss. If you have not already been provided with a written
32 statement of all victims' rights, please contact the victim
33 services division of the prosecutor's office.

34 Sec. 14. Title 31, chapter 3, article 1, Arizona Revised Statutes, is
35 amended by adding section 31-403, to read:

36 31-403. Commutation; restrictions on consideration

37 A. A PERSON WHO IS OTHERWISE ELIGIBLE FOR COMMUTATION AND WHO IS
38 DENIED A COMMUTATION OF SENTENCE RECOMMENDATION SHALL NOT PETITION OR BE
39 CONSIDERED BY THE BOARD FOR COMMUTATION OF THAT SENTENCE FOR A PERIOD OF FIVE
40 YEARS FOLLOWING THE DATE OF THE BOARD'S DENIAL OF THE COMMUTATION
41 RECOMMENDATION IF THE OFFENSE FOR WHICH THE COMMUTATION RECOMMENDATION WAS
42 DENIED INVOLVED ANY OF THE FOLLOWING:

43 1. DEATH IN VIOLATION OF SECTION 13-1104 OR 13-1105.

44 2. SERIOUS PHYSICAL INJURY IF THE PERSON WAS SENTENCED PURSUANT TO
45 SECTION 13-604.

1 3. A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-604.01.

2 4. A FELONY OFFENSE IN VIOLATION OF TITLE 13, CHAPTER 14 OR 35.1.

3 B. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 2 OF THIS SECTION, IF, IN
4 ITS SOLE DISCRETION, THE BOARD DETERMINES THAT THE PERSON COMMITTED AN
5 OFFENSE THAT INVOLVED SERIOUS PHYSICAL INJURY AS DEFINED IN SECTION 13-105
6 AND THAT THE PERSON WAS NOT SENTENCED PURSUANT TO SECTION 13-604, THE BOARD
7 MAY ORDER THAT THE PERSON SHALL NOT PETITION OR BE CONSIDERED BY THE BOARD
8 FOR COMMUTATION OF THAT SENTENCE FOR A PERIOD OF FIVE YEARS FOLLOWING THE
9 DATE OF THE BOARD'S DENIAL OF THE COMMUTATION RECOMMENDATION.

10 C. NOTWITHSTANDING SUBSECTION A OR B OF THIS SECTION, THE BOARD, AT
11 THE TIME OF DENIAL, MAY LENGTHEN THE FIVE YEAR PERIOD OF TIME PRESCRIBED IN
12 SUBSECTION A OR B OF THIS SECTION TO A PERIOD OF UP TO TEN YEARS, EXCEPT THAT
13 IF THE OFFENSE FOR WHICH COMMUTATION WAS DENIED INVOLVED A VIOLATION OF AN
14 OFFENSE LISTED IN SUBSECTION A, PARAGRAPH 1 OF THIS SECTION, THE BOARD MAY
15 LENGTHEN THE PERIOD OF TIME TO A PERIOD OF TIME THAT IS GREATER THAN TEN
16 YEARS AND THAT IS SPECIFIED BY THE BOARD BY ONE OF THE FOLLOWING VOTES:

17 1. A MAJORITY AFFIRMATIVE VOTE IF FOUR OR MORE MEMBERS CONSIDER THE
18 ACTION.

19 2. A UNANIMOUS AFFIRMATIVE VOTE IF THREE MEMBERS CONSIDER THE ACTION.

20 3. A UNANIMOUS AFFIRMATIVE VOTE IF TWO MEMBERS CONSIDER THE ACTION
21 PURSUANT TO SECTION 31-401, SUBSECTION I AND THE CHAIRMAN CONCURS AFTER
22 REVIEWING THE INFORMATION CONSIDERED BY THE TWO MEMBERS. IF THE CHAIRMAN IS
23 ONE OF THE TWO MEMBERS CONSTITUTING A TWO MEMBER QUORUM UNDER SECTION 31-401,
24 SUBSECTION I, AND BOTH THE CHAIRMAN AND THE OTHER MEMBER VOTE TO LENGTHEN THE
25 FIVE YEAR PERIOD TO A PERIOD OF TIME GREATER THAN TEN YEARS, NO FURTHER
26 ACTION SHALL BE TAKEN AND THE DECISION ON WHETHER TO LENGTHEN THE FIVE YEAR
27 PERIOD SHALL BE CONSIDERED BY THE BOARD AT A MEETING AT WHICH AT LEAST THREE
28 MEMBERS ARE PRESENT AND VOTING.

29 D. THE BOARD MAY WAIVE THE PROVISIONS OF SUBSECTIONS A, B AND C OF
30 THIS SECTION IF ANY OF THE FOLLOWING APPLIES:

31 1. THE PERSON IS IN IMMINENT DANGER OF DEATH DUE TO A MEDICAL
32 CONDITION, AS DETERMINED BY THE BOARD.

33 2. THE PERSON IS THE SUBJECT OF A WARRANT OF EXECUTION.

34 3. THE SENTENCE FOR WHICH COMMUTATION IS SOUGHT IS THE SUBJECT OF A
35 SPECIAL ORDER ISSUED BY THE COURT PURSUANT TO SECTION 13-603, SUBSECTION L.

36 E. THIS SECTION APPLIES ONLY TO OFFENSES THAT ARE COMMITTED ON OR
37 AFTER THE EFFECTIVE DATE OF THIS SECTION.

38 Sec. 15. Delayed repeal

39 Sections 13-4042 and 13-4234.01, Arizona Revised Statutes, as added by
40 this act, are repealed from and after September 30, 2007.

41 Sec. 15. Effective date

42 This act is effective from and after December 31, 2005.

1 Sec. 17. Intent

2 By adding section 31-403, Arizona Revised Statutes, the legislature
3 intends to protect the right of victims to be treated with respect and
4 dignity and to limit the number of commutation hearings victims may attend.


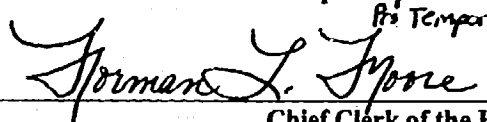
APPROVED BY THE GOVERNOR MAY 4, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2005.

Passed the House April 18, 2005

by the following vote: 49 Ayes,

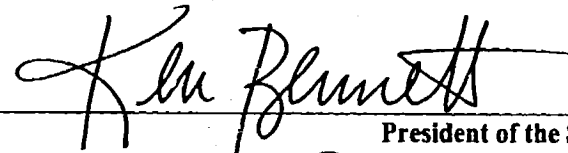
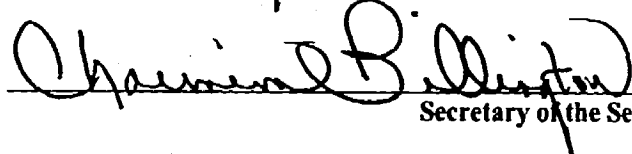
8 Nays, 3 Not Voting


Speaker of the House
Pro Tempore

Chief Clerk of the House

Passed the Senate March 14, 2005

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting


President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1433

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 28, 20 05,

by the following vote: 29 Ayes,

0 Nays, 0 Not Voting

Klu Bennett
President of the Senate
Chaimin Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28th day of April, 20 05,

at 4:00 o'clock P. M.

Wendy J. Hanna
Secretary to the Governor

Approved this 4 day of

May, 20 05,

at 3:00 o'clock P. M.

J. N. K.
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of May, 20 05,

at 4:19 o'clock P. M.

Janice K. Brewer
Secretary of State

S.B. 1433